

Chapter 133.

Public Works.

Article 1.

General Provisions.

§ 133-1. Employment of architects, etc., on public works when interested in use of materials prohibited.

It shall be unlawful for any architect, engineer, or other individual, firm, or corporation providing design services for any city, county or State work supported wholly or in part with public funds, knowingly to specify any building materials, equipment or other items which are manufactured, sold or distributed by any firm or corporation in which such designer or specifier has a financial interest by reason of being a partner, officer, employee, agent or substantial stockholder. (1933, c. 66, s. 1; 1977, c. 730.)

§ 133-1.1. Certain buildings involving public funds to be designed, etc., by architect or engineer.

(a) In the interest of public health, safety and economy, every officer, board, department, or commission charged with the duty of approving plans and specifications or awarding or entering into contracts involving the expenditure of public funds in excess of:

- (1) Three hundred thousand dollars (\$300,000) for the repair of public buildings where such repair does not include major structural change in framing or foundation support systems, or five hundred thousand dollars (\$500,000) for the repair of public buildings by The University of North Carolina or its constituent institutions where such repair does not include major structural change in framing or foundation support systems,
 - (1a) One hundred thousand dollars (\$100,000) for the repair of public buildings affecting life safety systems,
 - (2) One hundred thirty-five thousand dollars (\$135,000) for the repair of public buildings where such repair includes major structural change in framing or foundation support systems, or
 - (3) One hundred thirty-five thousand dollars (\$135,000) for the construction of, or additions to, public buildings or State-owned and operated utilities, shall require that such plans and specifications be prepared by a registered architect, in accordance with the provisions of Chapter 83A of the General Statutes, or by a registered engineer, in accordance with the provisions of Chapter 89C of the General Statutes, or by both architect and engineer, particularly qualified by training and experience for the type of work involved, and that the North Carolina seal of such architect or engineer together with the name and address of such architect or engineer, or both, be placed on all these plans and specifications.
- (b) (1) On all projects requiring the services of an architect, an architect shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:

- a. The inspections of the construction, repairs or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and
 - b. To the best of his knowledge and in the professional opinion of the architect, the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (2) On all projects requiring the services of an engineer, an engineer shall conduct frequent and regular inspections or such inspections as required by contract and shall issue a signed and sealed certificate of compliance to the awarding authority that:
 - a. The inspections of the construction, repairs, or installations have been conducted with the degree of care and professional skill and judgment ordinarily exercised by a member of that profession; and
 - b. To the best of his knowledge and in the professional opinion of the engineer, the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (3) No certificate of compliance shall be issued until the architect and/or engineer is satisfied that the contractor has fulfilled the obligations of such plans, specifications, and contract.
- (c) The following shall be excepted from the requirements of subsection (a) of this section:
 - (1) Dwellings and outbuildings in connection therewith, such as barns and private garages.
 - (2) Apartment buildings used exclusively as the residence of not more than two families.
 - (3) Buildings used for agricultural purposes other than schools or assembly halls which are not within the limits of a city or an incorporated village.
 - (4) Temporary buildings or sheds used exclusively for construction purposes, not exceeding 20 feet in any direction, and not used for living quarters.
 - (5) Pre-engineered garages, sheds, and workshops up to 5,000 square feet used exclusively by city, county, public school, or State employees for purposes related to their employment. For pre-engineered garages, sheds, and workshops constructed pursuant to this subdivision, there shall be a minimum separation of these structures from other buildings or property lines of 30 feet.
- (d) On projects on which no registered architect or engineer is required pursuant to the provisions of this section, the governing board or awarding authority shall require a certificate of compliance with the State Building Code from the city or county inspector for the specific trade or trades involved or from a registered architect or engineer, except that the provisions of this subsection shall not apply to projects where any of the following apply:
 - (1) The plans and specifications are approved by the Department of Administration, Division of State Construction, and the completed project is inspected by the Division of State Construction and the State Electrical Inspector.
 - (2) The project is exempt from the State Building Code.
 - (3) The project has a total projected cost of less than \$100,000 and does not alter life safety systems.

(e) All plans and specifications for public buildings of any kind shall be identified by the name and address of the author thereof.

(f) Neither the designer nor the contractor involved shall receive his final payment until the required certificate of compliance shall have been received by the awarding authority.

(g) On all facilities which are covered by this Article, other than those listed in subsection (c) of this section and which require any job-installed finishes, the plans and specifications shall include the color schedule. (1953, c. 1339; 1957, c. 994; 1963, c. 752; 1973, c. 1414, s. 2; 1979, c. 891; 1981, c. 687; 1983 (Reg. Sess., 1984), c. 970, s. 1; 1989, c. 24; 1997-412, s. 11; 1998-212, s. 11.8(e); 2001-496, ss. 6, 8(e); 2003-305, s. 1; 2005-300, s. 1; 2007-322, s. 1.)

§ 133-2. Drawing of plans by material furnisher prohibited.

It shall be unlawful for any architect, engineer, designer or draftsman, employed on county, State, or city works, to employ or allow any manufacturer, his representatives or agents, to write, plan, draw, or make specifications for such works or any part thereof. (1933, c. 66, s. 2.)

§ 133-3. Specifications to carry competitive items; substitution of materials.

All architects, engineers, designers, or draftsmen, when providing design services, or writing specifications, directly or indirectly, for materials to be used in any city, county or State work, shall specify in their plans the required performance and design characteristics of such materials. However, when it is impossible or impractical to specify the required performance and design characteristics for such materials, then the architect, engineer, designer or draftsman may use a brand name specification so long as they cite three or more examples of items of equal design or equivalent design, which would establish an acceptable range for items of equal or equivalent design. The specifications shall state clearly that the cited examples are used only to denote the quality standard of product desired and that they do not restrict bidders to a specific brand, make, manufacturer or specific name; that they are used only to set forth and convey to bidders the general style, type, character and quality of product desired; and that equivalent products will be acceptable. Where it is impossible to specify performance and design characteristics for such materials and impossible to cite three or more items due to the fact that there are not that many items of similar or equivalent design in competition, then as many items as are available shall be cited. On all city, county or State works, the maximum interchangeability and compatibility of cited items shall be required. The brand of product used on a city, county or State work shall not limit competitive bidding on future works. Specifications may list one or more preferred brands as an alternate to the base bid in limited circumstances. Specifications containing a preferred brand alternate under this section must identify the performance standards that support the preference. Performance standards for the preference must be approved in advance by the owner in an open meeting. Any alternate approved by the owner shall be approved only where (i) the preferred alternate will provide cost savings, maintain or improve the functioning of any process or system affected by the preferred item or items, or both, and (ii) a justification identifying these criteria is made available in writing to the public. Substitution of materials, items, or equipment of equal or equivalent design shall be submitted to the architect or engineer for approval or disapproval; such approval or disapproval shall be made by the architect or engineer prior to the opening of bids. The purpose of this statute is to mandate and encourage free and open competition on public contracts. (1933, c. 66, s. 3; 1951, c. 1104, s. 5; 1993, c. 334, s. 7.1; 2002-107, s. 5; 2002-159, s. 64(c).)

§ 133-4. Violation of Chapter made misdemeanor.

Any person, firm, or corporation violating the provisions of this Chapter shall be guilty of a Class 3 misdemeanor and upon conviction, license to practice his profession in this State shall be withdrawn for a period of one year and he shall only be subject to a fine of not more than five hundred dollars (\$500.00). (1933, c. 66, s. 4; 1993, c. 539, s. 969; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 133-4.1. Guaranteed energy savings contracts.

Except for G.S. 133-1 and [G.S.] 133-1.1, the provisions of this Article shall not apply to energy conservation measures undertaken as part of a guaranteed energy savings contract entered into pursuant to the provisions of Part 2 of Article 3B of Chapter 143 of the General Statutes. (1993 (Reg. Sess., 1994), c. 775, s. 8; 2002-161, s. 11.1.)

Article 2.

Relocation Assistance.

§ 133-5. Short title.

This Article shall be cited as "The Uniform Relocation Assistance and Real Property Acquisition Policies Act." (1971, c. 1107, s. 1.)

§ 133-6. Declaration of purpose.

The purpose of this Article is to establish a uniform policy for the fair and equitable treatment of persons displaced as a result of public works programs in order that such persons shall not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole and to insure continuing eligibility for federal aid funds to the State and its agencies and subdivisions. (1971, c. 1107, s. 1.)

§ 133-7. Definitions.

As used in this Article:

- (1) "Agency" means the State of North Carolina or any board, bureau, commission, institution, or other agency of the State, or any board or governing body of a political subdivision of the State, or an agency, commission, or authority of a political subdivision of the State.
- (2) "Business" means any lawful activity, excepting a farm operation, conducted primarily:
 - a. For the purchase, sale, lease and rental of personal and real property, and for the manufacture, processing, or marketing of products, commodities, or any other personal property;
 - b. For the sale of services to the public;
 - c. By a nonprofit organization; or
 - d. Solely for the purposes of G.S. 133-8(a), for assisting in the purchase, sale, resale, manufacture, processing, or marketing of products, commodities, personal property, or services by the erection and maintenance of an outdoor advertising display or displays, whether or not such display or displays are located on the premises on which any of the above activities are conducted.
- (3) a. "Displaced person" means, except as provided in subdivision (a)(ii)–

- (i) Any person who moves from real property, or moves his personal property from real property – (A) as a direct result of a written notice of intent to acquire or the acquisition of such real property in whole or in part for a program or project undertaken by an agency; or (B) on which such person is a residential tenant or conducts a small business, a farm operation, or business defined in G.S. 133-7(2)(d) as a direct result of rehabilitation, demolition, or such other displacing activity as the agency may prescribe, under a program or project undertaken by an agency in any case in which the agency determines that such displacement is permanent; and
 - (ii) Solely for the purposes of G.S. 133-8(a) and (b) and G.S. 133-11, any person who moves from real property, or moves his personal property from real property – (A) as a direct result of a written notice of intent to acquire or the acquisition of other real property, in whole or in part, on which such person conducts a business or farm operation, for a program or project undertaken by an agency; or (B) as a direct result of rehabilitation, demolition, or such other displacing activity as the agency may prescribe, of other real property on which such person conducts a business or farm operation, under a program or project undertaken by an agency where the agency determines that such displacement is permanent.
- b. The term "displaced person" does not include –
 - (i) A person who has been determined, according to criteria established by the agency, to be either unlawfully occupying the displacement dwelling or to have occupied such dwelling for the purpose of obtaining assistance under this Article;
 - (ii) In any case in which the agency acquires property for a program or project, any person (other than a person who was an occupant of such property at the time it was acquired) who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project.
- (4) "Farm operation" means any activity conducted solely or primarily for the production of one or more agricultural products or commodities, including timber, for sale or home use, and customarily producing such products or commodities in sufficient quantity to be capable of contributing materially to the operator's support.
- (5) "Person" means any individual, partnership, corporation or association.
- (6) "Program or project" for the purpose of this Article shall mean any construction or rehabilitation project undertaken by an agency, as herein defined or the utilization of real property by an agency for any other public purposes, and to which program or project the agency makes this Article applicable.
- (7) "Relocation officer" means the head of the department delegated the authority to carry out relocation policies by the agency.

- (8) "Comparable replacement dwelling" means any dwelling that is (i) decent, safe, and sanitary; (ii) adequate in size to accommodate the occupants; (iii) within the financial means of the displaced person; (iv) functionally equivalent; (v) in an area not subject to unreasonably adverse environmental conditions; and (vi) in a location generally not less desirable than the location of the displaced person's dwelling with respect to public utilities, facilities, services, and the displaced person's place of employment.
- (9) "Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.
- (10) "Lead agency" means the North Carolina Department of Transportation. The lead agency shall issue such rules and regulations as may be necessary to carry out this Article and to comply with federal aid regulations. (1971, c. 1107, s. 1; 1989, c. 28, s. 1.)

§ 133-8. Moving and related expenses.

(a) Whenever the acquisition of real property for a program or project undertaken by an agency will result in the displacement of any person, such agency shall make a payment to any displaced person, upon application as approved by the head of the agency for:

- (1) Actual reasonable expenses in moving himself, his family, business, farm operation, or other personal property;
- (2) Actual direct losses of tangible personal property as a result of moving or discontinuing a business or farm operation, but not to exceed an amount equal to the reasonable expenses that would have been required to relocate such property, as determined by the relocation officer; and
- (3) Actual reasonable expenses in searching for a replacement business or farm in accordance with criteria established by the lead agency, but not to exceed two thousand five hundred dollars (\$2,500); and
- (4) Actual reasonable expenses necessary to reestablish a displaced farm, nonprofit organization, or small business at its new site, in accordance with criteria to be established by the lead agency, but not to exceed ten thousand dollars (\$10,000).

(b) Any displaced person eligible for payments under subsection (a) of this section who is displaced from a dwelling and who elects to accept the payments authorized by this subsection in lieu of the payments authorized by subsection (a) of this section may receive an expense and dislocation allowance, which shall be determined according to a schedule established by the lead agency.

(c) Any displaced person eligible for payments under subsection (a) of this section who is displaced from the person's place of business or farm operation and who is eligible under criteria established by the lead agency may elect to accept the payment authorized by this subsection in lieu of the payment authorized by subsection (a) of this section. Such payment shall consist of a fixed payment in an amount to be determined according to criteria established by the lead agency, except that such payment shall not be less than one thousand dollars (\$1,000) nor more than twenty thousand dollars (\$20,000). A person whose sole business at the displacement dwelling is the rental of such property to others shall not qualify for a payment under this subsection. (1971, c. 1107, s. 1; 1989, c. 28, s. 2; 2005-331, s. 1.)

§ 133-9. Replacement housing for homeowners.

(a) In addition to payments otherwise authorized by this Article and subject to the provisions of G.S. 133-10.1 the agency shall make an additional payment not in excess of twenty-two thousand five hundred dollars (\$22,500) to any displaced person who is displaced from a dwelling actually owned and occupied by such displaced person for not less than 180 days prior to the initiation of negotiations for the acquisition of the property. Such additional payment shall include the following elements:

- (1) The amount, if any, which when added to the acquisition cost of the dwelling acquired by the agency, equals the reasonable cost of a comparable replacement dwelling. All determinations required to carry out this section shall be made in accordance with standards established by the lead agency.
- (2) The amount, if any, which will compensate such displaced person for any increased interest costs and other debt service costs which such person is required to pay for financing the acquisition of any such comparable replacement dwelling. Such amount shall be paid only if the dwelling acquired by the agency was encumbered by a bona fide mortgage which was a valid lien on such dwelling for not less than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling in accordance with criteria to be established by the lead agency.
- (3) Reasonable expenses incurred by such displaced person for evidence of title, recording fees, and other closing costs incident to the purchase of the replacement dwelling, but not including prepaid expenses.

(b) The additional payment authorized by this section shall be made only to a displaced person who purchases and occupies a comparable replacement dwelling within one year after the date on which such person receives final payment from the agency for the acquired dwelling, except that the agency may extend such period for good cause. If such period is extended, the payment under this section shall be based on the costs of relocating the person to a comparable replacement dwelling within one year of such date.

(c) The agency may, in cooperation with any federal agency upon application by a mortgagee, insure any mortgage (including advances during construction) on a comparable replacement dwelling executed by a displaced person assisted under this section, which mortgage is eligible for insurance under any federal law administered by such agency notwithstanding any requirements under such law relating to age, physical condition, or other personal characteristics of eligible mortgagors, and may make commitments for the insurance of such mortgage prior to the date of execution of the mortgage. (1971, c. 1107, s. 1; 1981, c. 101, s. 1; 1989, c. 28, s. 3.)

§ 133-10. Replacement housing for tenants and certain others.

(a) In addition to amounts otherwise authorized by this Article, the agency shall make a payment to or for any displaced person displaced from any dwelling not eligible to receive a payment under G.S. 133-9 which dwelling was actually and lawfully occupied by such displaced person for not less than 90 days immediately prior to (1) the initiation of negotiations for acquisition of such dwelling, or (2) in any case in which displacement is not a direct result of acquisition, such other event as the agency shall prescribe. Such payment shall consist of the amount necessary to enable such person to lease or rent for a period not to exceed 42 months, a comparable replacement dwelling, but not to exceed five thousand two hundred fifty dollars

(\$5,250). At the discretion of the agency, a payment under this subsection may be made in periodic installments. Computation of a payment under this subsection to a low-income displaced person for a comparable replacement dwelling shall take into account such person's income.

(b) Any person eligible for a payment under subsection (a) of this section may elect to apply such payment to a down payment on, and other incidental expenses pursuant to, the purchase of a comparable replacement dwelling. Any such person may, at the discretion of the agency, be eligible under this subsection for the maximum payment allowed under subsection (a), except that, in the case of a displaced homeowner who has owned and occupied the displacement dwelling for at least 90 days but not more than 180 days immediately prior to the initiation of negotiations for the acquisition of such dwelling, such payment shall not exceed the payment such person would otherwise have received under G.S. 133-9(a) had the person owned and occupied the displacement dwelling 180 days prior to the initiation of such negotiations. (1971, c. 1107, s. 1; 1981, c. 101, s. 2; 1989, c. 28, s. 4.)

§ 133-10.1. Authorization for replacement housing.

(a) As a last resort, if a project cannot proceed to actual construction because of the lack of availability of comparable sale or rental housing, or because required federal-aid payments are in excess of those otherwise authorized by this Article, the State of North Carolina and its agencies may:

- (1) Undertake through private contractors, after competitive bidding, to provide for the construction and renovation of the necessary housing,
- (2) Purchase sites and improvements after publishing in a newspaper of general circulation in the county in which such sites are located a public notice of the proposed transaction, including a description of the sites and improvements to be purchased, the owner or owners thereof, the terms of the transaction including the price and date of the proposed purchase, and a brief description of the factors upon which the agency has based its determination that such housing is not otherwise available, and
- (3) Sell or lease the premises to the displaced person upon such terms as the agency deems necessary.
- (4) Exceed the limitation in G.S. 133-9(a) and 133-10.

(b) Cities, counties and other local governments and agencies may comply with and provide assistance authorized under the Federal Uniform Relocation and Real Property Acquisition Policy Act of 1970, as amended, for last resort housing. (1975, c. 515; 1981, c. 101, ss. 3, 4; 1989, c. 28, s. 5.)

§ 133-11. Relocation assistance advisory services.

(a) Programs or projects undertaken by an agency shall be planned in a manner that (1) recognizes, at any early stage in the planning of such programs or projects and before the commencement of any actions which will cause displacements of individuals, families, businesses, and farm operations, and (2) provides for the resolution of such problems in order to minimize adverse impacts on displaced persons and to expedite program or project advancement and completion.

(b) Agencies shall ensure that the relocation assistance advisory services described in subsection (c) of this section are made available to all persons displaced by such agency. If such agency determines that any person occupying property immediately adjacent to the property where

the displacing activity occurs suffers substantial economic injury as a result thereof, the agency may make such advisory services available to that person.

(c) Each relocation assistance advisory program required by subsection (b) of this section shall include such measures, facilities, or services as may be necessary or appropriate in order to:

- (1) Determine, and make timely recommendations on, the needs and preferences, if any, of displaced persons for relocation assistance;
- (2) Provide current and continuing information on the availability, sales prices, and rental charges of comparable replacement dwellings for displaced homeowners and tenants and suitable locations for businesses and farm operations;
- (3) Assist a person displaced from a business or farm operation in obtaining and becoming established in a suitable replacement location;
- (4) Supply (i) information concerning federal, State, and local programs which may be of assistance to displaced persons, and (ii) technical assistance to such persons in applying for assistance under such programs;
- (5) Provide other advisory services to displaced persons in order to minimize hardships to such persons in adjusting to relocation; and
- (6) The agency shall coordinate relocation activities performed by such agency with other federal, State, or local governmental actions in the community which could affect the efficient and effective delivery of relocation assistance and related services.

(d) Notwithstanding G.S. 133-7(3)b, in any case in which a displacing agency acquires property for a program or project, any person who occupies such property on a rental basis for a short term or a period subject to termination when the property is needed for the program or project shall be eligible for advisory services to the extent determined by the agency. (1971, c. 1107, s. 1; 1989, c. 28, s. 6.)

§ 133-12. Expenses incidental to transfer of property.

(a) In addition to amounts otherwise authorized by this Article, the agency is authorized to reimburse or to pay on behalf of the owners of real property acquired for a program or project for reasonable and necessary expenses incurred for:

- (1) Recording fees, transfer taxes, and similar expenses incidental to conveying such property;
- (2) Penalty costs for prepayment of any preexisting mortgage recorded and entered into in good faith encumbering such real property; and
- (3) The pro rata portion of real property taxes paid which are allocable to a period subsequent to vesting of title in the agency, or the effective date of possession of such real property by the agency, whichever is earlier.

(b) Local taxing authorities shall accept prepayment of the agency's estimate of the amount of any taxes not levied but constituting a lien against real estate acquired by the agency, or the agency's estimate of its pro rata portion of such taxes, and such prepayment shall be applied to such taxes upon levy being made. (1971, c. 1107, s. 1.)

§ 133-13. Administration.

(a) The agency may enter into contracts with any individual, firm, association or corporation for services in connection with relocation assistance programs.

(b) The agency shall in carrying out relocation assistance activities utilize, whenever practicable, the services of other State or local agencies having experience in the administration or conduct in similar housing assistance activities.

(c) In acquisition of right-of-way for any State highway project, a municipality making the acquisition shall be vested with the same authority to render such services and to make such payments as is given the Board of Transportation in this Article. Such municipalities furnishing right-of-way are authorized to enter into contracts with any other municipal corporation, or State or federal agency, rendering such services. (1971, c. 1107, s. 1; 1973, c. 507, s. 5.)

§ 133-14. Regulations and procedures.

The agency is authorized to adopt such rules and regulations as it deems necessary and appropriate to carry out the provisions of this Article. The agency is authorized and empowered to adopt all or any part of applicable federal rules and regulations which are necessary or desirable to implement this Article. Such rules and regulations shall include, but not be limited to, provisions relating to:

- (1) Payments authorized by this Article to assure that such payments shall be fair and reasonable and as uniform as possible on those projects to which this Article is applicable;
- (2) Prompt payment after a move to displaced persons who make proper application and are entitled to payment, or, in hardship cases, payment in advance;
- (3) Moving expense and allowances as provided for in G.S. 133-8;
- (4) Standards for decent, safe and sanitary dwelling;
- (5) Eligibility of displaced persons for relocation assistance payments, the procedure for such persons to claim such payments, and the amounts thereof;
- (6) Procedure for an aggrieved displaced person to have his determination of eligibility or amount of payment reviewed by the agency head or its administrative officer; [and]
- (7) Projects or classes of projects on which payments as herein provided will be made. (1971, c. 1107, s. 1; 1973, c. 1446, s. 8.)

§ 133-15. Payments not to be considered as income.

No payment received under this Article shall be considered as income for the purposes of the State income tax law; nor shall such payments be considered as income or resources to any recipient of public assistance and such payment shall not be deducted from the amount of aid to which the recipient would otherwise be entitled under the provisions of Chapter 108 of the General Statutes. (1971, c. 1107, s. 1.)

§ 133-16. Real property furnished to the federal government.

Whenever real property is acquired by an agency and furnished as a required contribution to a federal project, the agency has the authority to make all payments and to provide all assistance in the same manner and to the same extent as in cases of acquisition by the agency of real property for a federal aid project. (1971, c. 1107, s. 1.)

§ 133-17. Administrative payments.

Nothing contained in this Article shall be construed as creating in any condemnation proceedings brought under the power of eminent domain, any element of damages not in existence on the date of enactment of this Article. Payments made and services rendered under this Article are administrative payments and in addition to just compensation as provided by the law of eminent domain. Nothing contained in this Article shall be construed as creating any right enforceable in any court and the determination of the agency under the procedure provided for in G.S. 133-14 shall be conclusive and not subject to judicial review. (1971, c. 1107, s. 1.)

§ 133-18. Additional payments by political subdivision.

The additional payments required under G.S. 133-8, 133-9, and 133-10 shall not be mandatory for political subdivisions of the State unless federal law makes such payments a condition of federal funding. (1989, c. 28, s. 7.)

§§ 133-19 through 133-22. Reserved for future codification purposes.

Article 3.

Regulation of Contractors for Public Works.

§ 133-23. Definition.

(a) The term "governmental agency" shall include the State of North Carolina, its agencies, institutions, and political subdivisions, all municipal corporations and all other public units, agencies and authorities which are authorized to enter into public contracts for construction or repair or for procurement of goods or services.

(b) The term "person" shall mean any individual, partnership, corporation, association, or other entity formed for the purpose of doing business as a contractor, subcontractor, or supplier.

(c) The term "subsidiary" shall mean a corporation with respect to which another corporation by virtue of its shareholdings alone has legal power, either directly or indirectly through another corporation or series of other corporations, domestic or foreign, to elect a majority of the directors. A corporation is a subsidiary of each such corporation, including any corporation through which this legal power may be indirectly exercised. (1981, c. 764, s. 1; 1991 (Reg. Sess., 1992), c. 1030, s. 38.)

§ 133-24. Government contracts; violation of G.S. 75-1 and 75-2.

Every person who shall engage in any conspiracy, combination, or any other act in restraint of trade or commerce declared to be unlawful by the provisions of G.S. 75-1 and 75-2 shall be guilty of a felony under this section where the combination, conspiracy, or other unlawful act in restraint of trade involves:

- (1) A contract for the purchase of equipment, goods, services or materials or for construction or repair let or to be let by a governmental agency; [or]
- (2) A subcontract for the purchase of equipment, goods, services or materials or for construction or repair with a prime contractor or proposed prime contractor for a governmental agency. (1981, c. 764, s. 1.)

§ 133-25. Conviction; punishment.

(a) Upon conviction of violating G.S. 133-24, any person shall be punished as a Class H felon. The court may also impose a fine of up to one hundred thousand dollars (\$100,000) on any convicted individual and a fine of up to one million dollars (\$1,000,000) on any convicted corporation. Any fine imposed pursuant to this section shall not be deductible on a State income tax return for any purpose.

(b) For a period of up to three years from the date of conviction, said period to be determined in the discretion of the court, no person shall be eligible to enter into a contract with any governmental agency, either directly as a contractor or indirectly as a subcontractor, if that person has been convicted of violating G.S. 133-24.

(c) In the event an individual is convicted of violating G.S. 133-24, the court may, in its discretion, for a period of up to three years from the date of conviction, provide that the individual shall not be employed by a corporation as an officer, director, employee or agent, if that corporation engages in public construction or repair contracts with a governmental agency, either directly as a contractor or indirectly as a subcontractor.

(d) The court shall also have authority to direct the appropriate contractor's licensing board to suspend the license of any contractor convicted of violating G.S. 133-24 for a period of up to three years from the date of conviction. (1981, c. 764, s. 1.)

§ 133-26. Individuals convicted may not serve on licensing boards.

No individual shall be eligible to serve as a member of any contractor's licensing board who has been convicted of criminal charges involving either:

- (1) A conspiracy in restraint of trade in the courts of this State in violation of G.S. 75-1, 75-2, or 133-24, or similar charges in any federal court or in any other state court; or
- (2) Bribery or commercial bribery in violation of G.S. 14-218 or 14-353 in the courts of this State, or of similar charges in any federal court or the court of any other state. (1981, c. 764, s. 1.)

§ 133-27. Suspension from bidding.

Any governmental agency shall have the authority to suspend for a period of up to three years from the date of conviction any person and any subsidiary or affiliate of any person from further bidding to the agency and from being a subcontractor to a contractor for the agency and from being a supplier to the agency if that person or any officer, director, employee or agent of that person has been convicted of charges of engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of any other state.

A governmental agency may order a temporary suspension of any contractor, subcontractor, or supplier or subsidiary or affiliate thereof charged in an indictment or an information with engaging in any conspiracy, combination, or other unlawful act in restraint of trade or of similar charges in any federal court or a court of this or any other state until the charges are resolved.

The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency. (1981, c. 764, s. 1.)

§ 133-28. Civil damages; liability; statute of limitations.

(a) Any governmental agency entering into a contract which is or has been the subject of a conspiracy prohibited by G.S. 75-1 or 75-2 shall have a right of action against the participants in the conspiracy to recover damages, as provided herein. The governmental agency shall have the

option to proceed jointly and severally in a civil action against any one or more of the participants for recovery of the full amount of the damages. There shall be no right to contribution among participants not named defendants by the governmental agency.

(b) At the election of the governmental agency, the measure of damages recoverable under this section shall be either the actual damages or ten percent (10%) of the contract price which shall be trebled as provided in G.S. 75-16.

(c) The cause of action shall accrue at the time of discovery of the conspiracy by the governmental agency which entered into the contract. The action shall be brought within six years of the date of accrual of the cause of action. (1981, c. 764, s. 1; 1993, c. 441.)

§ 133-29. Reporting of violations of G.S. 75-1 or 75-2.

Any person having knowledge of acts committed in violation of G.S. 75-1 or 75-2 involving a contract with a governmental agency who reports the same to that governmental agency and assists in any resulting proceedings may receive a reward as set forth herein. The governmental agency is authorized to pay to the informant up to twenty-five percent (25%) of any civil damages that it collects from the violator named by the informant by reason of the information furnished by the informant. The information and knowledge to be reported includes but is not limited to any agreement or proposed agreement or offer or request for agreement among contractors, subcontractors or suppliers to rotate bids, to share the profits with a contractor not the low bidder, to sublet work in advance of bidding as a means of preventing competition, to refrain from bidding, to submit prearranged bids, to submit complimentary bids, to set up territories to restrict competition, or to alternate bidding. (1981, c. 764, s. 1.)

§ 133-30. Noncollusion affidavits.

Noncollusion affidavits may be required by rule of any governmental agency from all prime bidders. Any such requirement shall be set forth in the invitation to bid. Failure of any bidder to provide a required affidavit to the governmental agency shall be grounds for disqualification of his bid. The provisions of this section are in addition to and not in derogation of any other powers and authority of any governmental agency. (1981, c. 764, s. 1.)

§ 133-31. Perjury; punishment.

Any person who shall willfully commit perjury in any affidavit taken pursuant to this Article or rules pursuant thereto shall be guilty of a felony and shall be punished as a Class I felon. (1981, c. 764, s. 1; 1993, c. 539, s. 1307; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 133-32. Gifts and favors regulated.

- (a) It shall be unlawful for any contractor, subcontractor, or supplier who:
- (1) Has a contract with a governmental agency; or
 - (2) Has performed under such a contract within the past year; or
 - (3) Anticipates bidding on such a contract in the future
- to make gifts or to give favors to any officer or employee of a governmental agency who is charged with the duty of:
- (1) Preparing plans, specifications, or estimates for public contract; or
 - (2) Awarding or administering public contracts; or
 - (3) Inspecting or supervising construction.

It shall also be unlawful for any officer or employee of a governmental agency who is charged with the duty of:

- (1) Preparing plans, specifications, or estimates for public contracts; or
- (2) Awarding or administering public contracts; or
- (3) Inspecting or supervising construction

willfully to receive or accept any such gift or favor.

(b) A violation of subsection (a) shall be a Class 1 misdemeanor.

(c) Gifts or favors made unlawful by this section shall not be allowed as a deduction for North Carolina tax purposes by any contractor, subcontractor or supplier or officers or employees thereof.

(d) This section is not intended to prevent a gift a public servant would be permitted to accept under G.S. 138A-32, or the gift and receipt of honorariums for participating in meetings, advertising items or souvenirs of nominal value, or meals furnished at banquets. This section is not intended to prevent any contractor, subcontractor, or supplier from making donations to professional organizations to defray meeting expenses where governmental employees are members of such professional organizations, nor is it intended to prevent governmental employees who are members of professional organizations from participation in all scheduled meeting functions available to all members of the professional organization attending the meeting. This section is also not intended to prohibit customary gifts or favors between employees or officers and their friends and relatives or the friends and relatives of their spouses, minor children, or members of their household where it is clear that it is that relationship rather than the business of the individual concerned which is the motivating factor for the gift or favor. However, all such gifts knowingly made or received are required to be reported by the donee to the agency head if the gifts are made by a contractor, subcontractor, or supplier doing business directly or indirectly with the governmental agency employing the recipient of such a gift. (1981, c. 764, s. 1; 1987, c. 399, s. 1; 1993, c. 539, s. 970; 1994, Ex. Sess., c. 24, s. 14(c); 2007-348, s. 18.)

§ 133-33. Cost estimates; bidders' lists.

Any governmental agency responsible for letting public contracts may promulgate rules concerning the confidentiality of:

- (1) The agency's cost estimate for any public contracts prior to bidding; and
- (2) The identity of contractors who have obtained proposals for bid purposes for a public contract.

If the agency's rules require that such information be kept confidential, an employee or officer of the agency who divulges such information to any unauthorized person shall be subject to disciplinary action. This section shall not be construed to require that cost estimates or bidders' lists be kept confidential. (1981, c. 764, s. 1.)

Article 4.

Purchase of Contaminated Property by Public Entities.

§ 133-40. Purchase of contaminated property by public entities.

(a) For purposes of this Article, the term "public entity" means the State and the Community College System; provided, however, that the term does not include the Department of Transportation in the exercise of the powers conferred by G.S. 136-19.

(b) No public entity, as defined in subsection (a) of this section, shall purchase or otherwise acquire an ownership interest in any real property with known contamination, as that term is defined in G.S. 130A-310.65(5), without approval of the Governor and the Council of State. A public entity seeking to purchase or otherwise acquire an ownership interest in such property shall petition the Governor and Council of State for approval of the transaction, with sufficient information to identify the property, the nature and extent of the contamination present, and a plan of paying for the project and for remediation of any contamination without the use of General Fund appropriations. The approval of such a transaction by the Governor and Council of State may be evidenced by a duly certified copy of excerpt of minutes of the meeting of the Governor and Council of State, attested by the private secretary to the Governor or the Governor, reciting such approval, affixed to the instrument of acquisition or transfer, and said certificate may be recorded as a part thereof, and the same shall be conclusive evidence of review and approval of the subject transaction by the Governor and Council of State. The Governor, acting with the approval of the Council of State, may delegate the review and approval of such transactions as the Governor deems advisable.

(c) This Article shall not apply to situations in which a public entity acquires ownership or control of real property involuntarily, including having obtained the property through bankruptcy, tax delinquency, abandonment, or other circumstances in which the public entity involuntarily acquires title by virtue of its function as a sovereign. (2013-413, s. 40(a); 2015-106, s. 1.)